IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1340 of 2005

1.Anchor Health & Beauty Care)
Ltd., having their office at)
G-6 Basushree, Gross Road-A,)
M.I.D.C. Marol, Andheri (E),)
Mumbai-400 093.)
2.Deepak & Co., Partnership)
Firm, having their Regd.Office)
at 2408, Panchratna, Opera)
House, Mumbai-400 004.)..PETITIONERS

Versus

1.Municipal Corporation of)
Greater Bombay having its)
Office at Mahapalika Marg,)
Mumbai-400 001.)
2.Shri M.D. Mirkar, Asst.)
Assessor Colector, K-East Ward)
Gundavili, Andheri (E),)
Mumbai.)
3.The Oficial Liquidator of)
M/s.Nihon Electronics Ltd.)
(In Liquidation) having his)
office at 5th Floor, Bank of)
India Building, Mumbai.)...RESPONDENTS

Mr. Vineet B. Naik with Mr. A. Ramakrishna for the Petitioners

Smt. A.R. Joshi, for B.M.C.

Mr. P.G. Rao, Deputy Liquidator present.

CORAM: F.I. REBELLO J.
DATE : 16th September, 2005

JUDGMENT:

. Rule. Heard forthwith. M/s.Nihon Electronics Ltd., (In Liquidation) had a factory premises situated at Plot No.D-10, MIDC, Marol,

Andheri (East), Mumbai. Pursuant to Company Petition No.6289 of 1984 the Official Liquidator was appointed for the properties of the said company in liquidation both movable and immovable. On 20th June, 2003 the Official Liquidator issued a public notice for sale of the immovable property of the company. The auction took place on 23rd July, 2003 and the offer by the Petitioner No.1 was accepted for a total consideration of Rs.4.10 crores. On 6th August, 2003 the entire consideration of Rs.4.10 crores was paid in the office of the Official Liquidator. On 12th August, 20903 the physical possession of the immovable property as described earlier was given to the petitioners. The Official Liquidator on 17th October, 2003 executed the Deed of Assignment in favour of the petitioner No.1.

2. After the property had vested in the petitioner No.1 pursuant to the auction sale and Deed of Assignment, the respondent NO.2 issued a warrant of attachment which was pasted at the site on 22nd March, 2005. The warrant was issued in respect of non-payment of property taxes for the period from 1st October, 1989 to 31st March, 2003 in a total sum of Rs.72,80,592/-. On 4th April, 2005 on behalf of the petitioners a letter was addressed by the Advocate to respondent No.2 pointing out that

the company had been wound up on 3rd March, 1996 and the Official Liquidator has been appointed. It was also pointed out that the petitioner No.1 had deposited the entire sale consideration and taken physical possession and as such the petitioners were not liable to pay any past dues of the company in liquidation. The attention of the respondent No.2 was also invited to the fact that if there be any claim for past dues they could approach the Official Liquidator by filing affidavit of claim. By letter dated April 6, 2005, respondent Nos. 2 and 3 were directed to withdraw the warrant of attachment. It was also pointed out that in so far as the dues after 11th June, 2003 the petitioners were ready and willing to deposit the same subject to the confirmation that the money would be adjusted against the dues from 11th June, 2003 till 31st March, 2005 and not against any past liability/dues. As the petitioners did not hear anything in the matter a reminder was once again sent. Thereafter a letter came to be addressed on behalf of the Official Liquidator on 27th April, 2005 and addressed to respondent No.2 pointing out that the company was ordered to be wound up and the Official Liquidator was appointed with usual powers under the Companies Act, 1956. Pursuant to the order of the Company Court the property was sold in public

auction and purchased by the petitioner No.1 and in so far as the claim of respondent Nos. 1 and 2 is concerned, the same could be lodged in Form No.66. The copy of the Company Courts order was enclosed with the said letter. It is the case of the petitioners that warrant of attachment has created serious hurdles and the petitioners are not in a position to carry on business and use the premises as basic amenities like water is not provided.

3. At the hearing of this petition on behalf of the petitioners learned Counsel principally contends that once the property being the property of a company which was ordered to be wound up and the petitioner No.1 is purchaser pursuant to the property being sold by the order of the Company Court, the petitioner No.1 would be liable only for taxes after the purchase. In respect of taxes before the purchase, the respondent Nos. 1 and 2 if they have any claim can file the same before the respondent No.3 and in fact the respondent No.3 has intimated to them. The order of attachment, therefore, for the taxes for the period between 1st October, 1989 and 31st March, 2005 is without jurisdiction and consequently is liable to be withdrawn and/or quashed.

4. On behalf of the respondent corporation learned Counsel draws the attention of the Court to Section 212 of the Mumbai Municipal Corporation Act, 1888 which hereinafter shall be referred to as the Act. It is pointed out that the property taxes due under the Act in respect of any building or land shall subject to the prior payment of the land revenue if any to the State Government thereupon be a first charge in the case of any building or land held immediately from the Government. In other words it is sought to be pointed out that apart from the prior payment of land revenue the respondent No.1 has a first charge on the property.

5. The issue which, therefore, arises for consideration is whether the tax on the property sold in the proceedings of winding up of a company is carried with the property and the purchaser is liable to pay the dues for the liability of the purchaser is only from the date of purchase.

6. To answer the issue, we may first consider the nature of the charge which the respondent Nos. 1 and 2 claimed. We are really not concerned here with a case where the property is transferred from one owner to another in the normal course. We are concerned with the effect of winding up of a company

and sale of its assets and the effect of Section 212 of the Act. The issue of priority of claim of State debts had come up for consideration before the Apex Court in **Builder Supply Corporation Vs. Union of India AIR 1965 SC 105**. In that case the issue was whether the Income Tax claims of the Government of India were entitled to preference over debts of unsecured creditors. The matter again came up for consideration in **Superintendent and Remembrance of Legal Affairs, West Bengal v. Corporation of Calcutta AIR 1967 SC 1061. In Imperial Chit Funds vs. Income-tax Officer, (1996) 3 Cmp. L.J. 1 (SC)** the issue before the Apex Court was the claim of Income Tax dues qua Section 530(1)(a). In other words in respect of unsecured creditors. The law, therefore, as declared by the Apex Court is that between unsecured creditors and the claim of the State, the State dues would have preference provided the other predicates of Section 530 of the Companies Act are satisfied. This matter had come up for consideration in **Syndicate Bank v. Official Liquidator, Wester Works Engineers Ltd. and Ors. (1999) 2 Comp. LJ 211**. There again the issue was the claim of tax authorities under Section 178 of the Income Tax Act. Referring to various judgments of the Apex Court and other High Courts including of this Court, this Court reiterated the views that the

State does not have any preferential right over secured creditors. Preferential right of the State is over unsecured creditors provided they satisfy other requirements of Section 530(1)(a). Section 212 of the Act,therefore, would be of no assistance to hold that the respondent Nos. 1 and 2 have a preferential rights over the secured creditors or other unsecured creditors. The preferential right qua unsecured creditors would be if the predicates of Section 530(1)(a) are met. In **Rajratha Naranbhai Mills C. Ltd. vs. Sales Tax Officer, Petlad, (1991) 3 SCC 283** the Apex Court once again reiterated the position considering Section 530(1)(a) that the State's priority to claim can only be if the tax has come due and payable within the period of 12 months next before the relevant date so as to sustain State's priority claim. Section 530 as we have noted earlier is in respect of unsecured creditors.

7. The next question is who is liable to pay the debts of a company before winding up, after winding up and subsequent to purchase by a party in proceedings for sale of a company in liquidation. By virtue of Section 457 amongst other powers conferred on the Liquidator, is the power to sell immovable and movable properties by public auction

or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels. It would, therefore, be clear that until the property is sold by virtue of Section 457 all claims against the company have to be filed before the Liquidator. Considering the scheme of the Companies Act no action could be taken against the assets of the company without seeking leave of the Company Court and joining the Liquidator as party to the proceedings. In **Re Nolton Business Centres Ltd. Eliades v. City of London Common Council**, the issue was, who had to pay the rates which accrued due before the winding up of the company. In that case the respondent was a billing authority for non-domestic rates in the City of London and sent bills to the Company in respect of the premises in the City, which the Company elected to pay by instalments. On 29th October, 1990 the Company went into voluntary liquidation but the liquidator continued to trade from the company's premises until 30th June, 1991. It was held therein by the Chancery Division of the Companies Court that the claim of the respondent which accrued before winding up of the company before the commencement of the winding up had to be proven for in the company's winding up. However, the instalments falling due for payment after 29th October, 1990 had to be paid

in full as liquidation expenses, because they were sums which became due after the commencement of the winding up in respect of property of which the liquidator retained possession for the purposes of the company. We are really not concerned with the latter part as it is not the case of anybody that after liquidator took possession the business of the company was continued and even if continued the liability to pay would not be that of the petitioners, but as expenses of the liquidator as liquidation expenses.

. It would, therefore, be clear that in so far as the petitioners are concerned their liability would arise only on purchase. There is no dispute over here that the petitioners from the date of purchase have paid the bills which were served upon them. The warrant of attachment is for a period previous to the purchase of the property by the petitioners No.1 herein.

. The judgment in **Municipal Corporation of Delhi vs. Trigon Investment and Trading Pvt. Ltd. & Anr., (1996) 3 SCC 630** does not deal with the issue of sale of a property in winding up and its purchase but provides for a case of transfer of a property. That judgment holds that the transferee

would be liable for the taxes if transferor had not paid the same. That was considering also the provisions of the Delhi Municipal Corporation Act and the language of the section which was considered therein. In **International Coach Builders Ltd. v. Karnataka State Financial Corporation, AIR 2003 SC 2012** the Apex Court noted that in a case of a company in winding up the provisions of Section 529 and 529A will come into play and the State Financial Corporation Act cannot sell and release the security without reference to the Company Court.

8. It is no doubt true that under Section 146 of the Municipal Corporation Act 1888 the property taxes are liable to be paid as set out therein. However, we may now refer to some of the provisions of the Indian Companies Act. Under Section 447 an order of winding up of a company operates in favour of all creditors. Under Section 456 once an order for winding up has been made the Liquidator has to take into custody the properties, effects and actionable claims to which the company is or appears to be entitled. Under Section 457 the Liquidator has power to sell the movable and immovable properties. Under Section 528 all debts payable on a contingency, and all claims against the company, present or future, are admissible to proof against

the company. By virtue of Section 529 the same Rules as in force for the time being under the law of Insolvency with respect to the estates of persons adjudged insolvent would be applicable. Various other provisions gives certain priority to secured creditors and other unsecured creditors, preferential payment in Section 530. Therefore, the respondent No.1 as one the creditors of the company in winding up and as a creditor it has to file a claim with the Liquidator. Once the Liquidator sells the properties from the realisation of the assets of the company to be paid to the creditors in order of preference. The respondent No.1 is not a secured creditor, who can stand outside the winding up. The respondent No.1 will have to file its claim before the Liquidator. It is, therefore, only the amounts realised and available with the Official Liquidator which are payable to various creditors.

9. Having said so the position in law would be clear that the purchaser of property from a Liquidator of the company in winding up is not liable to pay the taxes for the period previous to his purchase. All claims before the purchase will have to be filed before the Official Liquidator and it is for the Liquidator to consider the priority of claim of Respondent Nos. 1 and 2 and accordingly

decide the same. The respondent Nos. 1 and are, therefore bound to file their claim before the Official Liquidator and if there are no secured creditors or the secured creditors are paid off and amounts are still available the claim of the respondent Nos. 1 and 2 to be considered according to law.

10. In the light of that Rule made absolute in terms of prayer clauses (a) and (b).

(F.I.REBELLO, J.)